

## REMARKS

This is a full and timely response to the outstanding final Office Action mailed January 26, 2007. Upon consideration of this response, claims 1 – 25 and 27 – 36 remain pending. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### I. Rejections Under 35 U.S.C. §103

#### A. Claim 1 is Allowable Over Ellis in view of LaJoie, TheStranger, and Imajima

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/60790 (“Ellis”) in view of U.S. Patent Number 6,772,433 (“LaJoie”), NPL reference www.thestranner.com (“The Stranger”), and U.S. Patent Number 6,211,901 (“Imajima”). Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* fails to disclose, teach, or suggest all of the elements of claim 1.

More specifically, claim 1 recites:

A method for providing media services via an interactive media services client device coupled to a programmable media services server device, said method comprising:

providing a user with an interactive program guide (IPG), the IPG including a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being *scheduled for broadcast to a plurality of users at a predetermined current time*, and at least one scheduled future television program, said scheduled future television program being otherwise available only via a scheduled *broadcast to a plurality of users at a predetermined later time*, said *IPG being configured to provide a user option to highlight at least one scheduled program* in the television program schedule;

*in response to a user highlighting said scheduled future television program*, providing said user with an *option to view the highlighted scheduled future television program at a user-defined time*;

receiving user input requesting said scheduled future television program for display at a user-defined time, wherein said user-defined time is prior to said later time, and wherein said user input requesting said scheduled future television program for display at a user-defined time includes a request for beginning a display of the scheduled future television program at a time when said scheduled future television program is not scheduled to begin broadcasting to a plurality of users; and

providing said user with said scheduled future television program at said user-defined time. (*emphasis added*)

Applicants respectfully submit that claim 1 is allowable over the cited art for at least the reason that *Ellis* in view of *The Stranger*, further in view of *LaJoie*, and further in view of *Imajima* fails to disclose, teach, or suggest a “method for providing media services via an interactive media services client device coupled to a programmable media services server device, said method comprising... providing a user with an interactive program guide (IPG), the IPG including a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being *scheduled for broadcast to a plurality of users at a predetermined current time*, and at least one scheduled future television program, said scheduled future television program being otherwise available only via a scheduled *broadcast to a plurality of users at a predetermined later time*, said *IPG being configured to provide a user option to highlight at least one scheduled program* in the television program schedule... [and] *in response to a user highlighting said scheduled future television program*, providing said user with an *option to view the highlighted scheduled future television program at a user-defined time*” as recited in claim 1.

More specifically, Applicants submit that *Ellis* discloses a “Program Guide System with Video-On-Demand Browsing” (title). “If a video-on-demand program of interest is found, the

viewer has several options. For example, the viewer may... 2) request the program..." (p. 25, line 10). "[I]f the selected program is ordered for a later time, the program guide may automatically start the program at that later time. Furthermore, the program guide may be configured to present a reminder screen... so that the viewer is reminded of the scheduled start-time. When this reminder is received, the viewer may be given the option to... watch the program immediately..." (p. 25, line 30). *Ellis* appears to disclose that a user can schedule a video-on-demand program for his/her independent viewing and can then reschedule the program for his/her independent viewing. Applicants respectfully submit that this is different than "providing a user with an interactive program guide (IPG), the IPG including a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being **scheduled for broadcast to a plurality of users at a predetermined current time**, and at least one scheduled future television program, said scheduled future television program being otherwise available only via a scheduled **broadcast to a plurality of users at a predetermined later time**, said **IPG being configured to provide a user option to highlight at least one scheduled program** in the television program schedule... [and] **in response to a user highlighting said scheduled future television program**, providing said user with an **option to view the highlighted scheduled future television program at a user-defined time**" as recited in claim 1.

Applicants additionally submit that *LaJoie* fails to overcome the deficiencies of *Ellis*. More specifically, *LaJoie* appears to disclose a "[h]ighlighted program summary 346 may list program name 374, running time 376, brief description 378, and icons 380 indicating applicable characteristics program (SAP), and stereo for the program highlighted in the

program grid 366 by program cursor 394” (column 24, line 12). Applicants respectfully submit that this is different than “providing a user with an interactive program guide (IPG), the IPG including a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being *scheduled for broadcast to a plurality of users at a predetermined current time*, and at least one scheduled future television program, said scheduled future television program being otherwise available only via a scheduled *broadcast to a plurality of users at a predetermined later time*, said *IPG being configured to provide a user option to highlight at least one scheduled program* in the television program schedule... [and] *in response to a user highlighting said scheduled future television program*, providing said user with an *option to view the highlighted scheduled future television program at a user-defined time*” as recited in claim 1. For at least this reason, claim 1 is allowable over the cited art.

Additionally, neither *TheStranger* nor *Imajima* disclose all of the elements of claim 1. More specifically, *TheStranger* merely discloses *The Truman Show* next to the date of February 11. *TheStranger* not only fails to disclose anything related to an “*IPG being configured to provide a user option to highlight at least one scheduled program* in the television program schedule,” but *TheStranger* fails to disclose whether *The Truman Show* has aired the previous February 11, whether the author of *TheStranger* desires to view *The Truman Show* at this time, or anything related to claim 1. For at least this reason, *TheStranger* fails to overcome the deficiencies of *Ellis*.

Further, *Imajima* appears to disclose, at most, “an NVOD... [and] an FVOD” (column 1, line 30). Applicants respectfully submit that this does not overcome the deficiencies of

*Ellis*, *LaJoie*, and *TheStranger*. For at least the reason that the references independently and in combination fail to disclose all of the claimed elements, claim 1 is allowable over the cited art.

**B. Claim 19 is Allowable Over *Ellis* in view of *LaJoie* and *Imajima***

The Office Action indicates that claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima*. Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* fails to disclose, teach, or suggest all of the elements of claim 19. More specifically, claim 19 recites:

A media services device for providing a client device with a media presentation, said device comprising:

logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being *scheduled for broadcast to a plurality of users at a predetermined current time*, said television program schedule including at least one scheduled future television program, said scheduled future television program being otherwise available only via a *scheduled broadcast to a plurality of users at a predetermined later time*;

logic configured to provide said client device with information related to an interactive program guide (IPG) that includes said television program schedule, said IPG being configured to provide a user *option to highlight at least one scheduled television program in the program schedule*;

logic configured to provide, *in response to a user highlighting said scheduled future television program*, said client device with data related to a user option to provide said client device with said *scheduled future television program at a user-defined time*; and

logic configured to provide said client device with said scheduled future television program at a user-defined time according to a received user input,

wherein said user-defined time is prior to said later time, and

wherein said received user input can include a request for beginning a display of the scheduled future television program at a time

when said scheduled future television program is not scheduled to begin broadcasting to a plurality of users. (*emphasis added*)

Applicants respectfully submit that claim 19 is allowable over the cited art for at least the reason that *Ellis* in view of *The Stranger*, further in view of *LaJoie*, and further in view of *Imajima* fails to disclose, teach, or suggest a “media services device for providing a client device with a media presentation, said device comprising… logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being ***scheduled for broadcast to a plurality of users at a predetermined current time***, said television program schedule including at least one scheduled future television program, said scheduled future television program being otherwise available only via a ***scheduled broadcast to a plurality of users at a predetermined later time***… logic configured to provide said client device with information related to an interactive program guide (IPG) that includes said television program schedule, said IPG being configured to provide a user ***option to highlight at least one scheduled television program in the program schedule***… [and] logic configured to provide, ***in response to a user highlighting said scheduled future television program***, said client device with data related to a user option to provide said client device with said ***scheduled future television program at a user-defined time***” as recited in claim 19.

More specifically, Applicants submit that *Ellis* discloses a “Program Guide System with Video-On-Demand Browsing” (title). “If a video-on-demand program of interest is found, the viewer has several options. For example, the viewer may… 2) request the program…” (p. 25, line 10). “[I]f the selected program is ordered for a later time, the program guide may

automatically start the program at that later time. Furthermore, the program guide may be configured to present a reminder screen... so that the viewer is reminded of the scheduled start-time. When this reminder is received, the viewer may be given the option to... watch the program immediately..." (p. 25, line 30). *Ellis* appears to disclose that a user can schedule a video-on-demand program for his/her independent viewing and can then reschedule the program for his/her independent viewing. Applicants respectfully submit that this is different than "logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being ***scheduled for broadcast to a plurality of users at a predetermined current time***, said television program schedule including at least one scheduled future television program, said scheduled future television program being otherwise available only via a ***scheduled broadcast to a plurality of users at a predetermined later time***... logic configured to provide said client device with information related to an interactive program guide (IPG) that includes said television program schedule, said IPG being configured to provide a user ***option to highlight at least one scheduled television program in the program schedule***... [and] logic configured to provide, ***in response to a user highlighting said scheduled future television program***, said client device with data related to a user option to provide said client device with said ***scheduled future television program at a user-defined time***" as recited in claim 19.

Applicants additionally submit that *LaJoie* fails to overcome the deficiencies of *Ellis*. More specifically, *LaJoie* appears to disclose a "[h]ighlighted program summary 346 may list program name 374, running time 376, brief description 378, and icons 380 indicating applicable characteristics program (SAP), and stereo for the program highlighted in the

program grid 366 by program cursor 394" (column 24, line 12). Applicants respectfully submit that this is different than "logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being ***scheduled for broadcast to a plurality of users at a predetermined current time***, said television program schedule including at least one scheduled future television program, said scheduled future television program being otherwise available only via a ***scheduled broadcast to a plurality of users at a predetermined later time***... logic configured to provide said client device with information related to an interactive program guide (IPG) that includes said television program schedule, said IPG being configured to provide a user ***option to highlight at least one scheduled television program in the program schedule***... [and] logic configured to provide, ***in response to a user highlighting said scheduled future television program***, said client device with data related to a user option to provide said client device with said ***scheduled future television program at a user-defined time***" as recited in claim 19. For at least this reason, claim 19 is allowable over the cited art.

Additionally, neither *TheStranger* nor *Imajima* disclose all of the elements of claim 19. More specifically, *TheStranger* merely discloses *The Truman Show* next to the date of February 11. *TheStranger* not only fails to disclose anything related to "logic configured to provide said client device with information related to an interactive program guide (IPG) that includes said television program schedule, said IPG being configured to provide a user ***option to highlight at least one scheduled television program in the program schedule***," but *TheStranger* fails to disclose whether *The Truman Show* has aired the previous February 11, whether the author of *TheStranger* desires to view *The Truman Show* at this time, or anything

related to claim 19. For at least this reason, *TheStranger* fails to overcome the deficiencies of *Ellis*.

Further, *Imajima* appears to disclose, at most, “an NVOD... [and] an FVOD” (column 1, line 30). Applicants respectfully submit that this does not overcome the deficiencies of *Ellis*, *LaJoie*, and *TheStranger*. For at least the reason that the references independently and in combination fail to disclose all of the claimed elements, claim 19 is allowable over the cited art.

### C. Claim 36 is Allowable Over *Ellis* in view of *LaJoie* and *Imajima*

The Office Action indicates that claim 36 stands rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima*. Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* fails to disclose, teach, or suggest all of the elements of claim 36. More specifically, claim 36 recites:

A media services client device for providing a user with a media presentation, said device comprising:

logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled television programs, the plurality of scheduled television programs including at least one currently scheduled television program, said currently scheduled television program being *scheduled for broadcast to a plurality of users at a predetermined current time*, and at least one scheduled future television program, *said scheduled future television program being otherwise available only via a scheduled broadcast to a plurality of users at a predetermined later time*;

logic configured to provide said user with an interactive program guide (IPG) configured to display the television program schedule, said IPG being further configured to *provide a user option to highlight a scheduled television program in the program schedule*; and

logic configured to provide, *in response to a user highlighting said scheduled future television program*, said user *with said scheduled future television program at a user-defined time*,

*wherinc said user-defined time is prior to said later time, and*

wherein said logic configured to provide said user with said scheduled future television program at a user-defined time includes logic configured to begin presentation of said scheduled future television program at a time when said scheduled future television program is not scheduled to begin broadcasting to a plurality of users.  
*(emphasis added)*

Applicants respectfully submit that claim 36 is allowable over the cited art for at least the reason that *Ellis* in view of *The Stranger*, further in view of *LaJoie*, and further in view of *Imajima* fails to disclose, teach, or suggest a “media services client device for providing a user with a media presentation, said device comprising… logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled television programs, the plurality of scheduled television programs including at least one currently scheduled television program, said currently scheduled television program being *scheduled for broadcast to a plurality of users at a predetermined current time*, and at least one scheduled future television program, *said scheduled future television program being otherwise available only via a scheduled broadcast to a plurality of users at a predetermined later time*… logic configured to provide said user with an interactive program guide (IPG) configured to display the television program schedule, said IPG being further configured to *provide a user option to highlight a scheduled television program in the program schedule*… [and] logic configured to provide, *in response to a user highlighting said scheduled future television program*, said user *with said scheduled future television program at a user-defined time*” as recited in claim 36.

More specifically, Applicants submit that *Ellis* discloses a “Program Guide System with Video-On-Demand Browsing” (title). “If a video-on-demand program of interest is found, the viewer has several options. For example, the viewer may… 2) request the program…” (p. 25,

line 10). “[I]f the selected program is ordered for a later time, the program guide may automatically start the program at that later time. Furthermore, the program guide may be configured to present a reminder screen... so that the viewer is reminded of the scheduled start-time. When this reminder is received, the viewer may be given the option to... watch the program immediately...” (p. 25, line 30). *Ellis* appears to disclose that a user can schedule a video-on-demand program for his/her independent viewing and can then reschedule the program for his/her independent viewing. Applicants respectfully submit that this is different than “logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled television programs, the plurality of scheduled television programs including at least one currently scheduled television program, said currently scheduled television program being ***scheduled for broadcast to a plurality of users at a predetermined current time***, and at least one scheduled future television program, ***said scheduled future television program being otherwise available only via a scheduled broadcast to a plurality of users at a predetermined later time***... logic configured to provide said user with an interactive program guide (IPG) configured to display the television program schedule, said IPG being further configured to ***provide a user option to highlight a scheduled television program in the program schedule***... [and] logic configured to provide, ***in response to a user highlighting said scheduled future television program***, said user ***with said scheduled future television program at a user-defined time***” as recited in claim 36.

Applicants additionally submit that *LaJoie* fails to overcome the deficiencies of *Ellis*. More specifically, *LaJoie* appears to disclose a “[h]ighlighted program summary 346 may list program name 374, running time 376, brief description 378, and icons 380 indicating applicable characteristics program (SAP), and stereo for the program highlighted in the

program grid 366 by program cursor 394” (column 24, line 12). Applicants respectfully submit that this is different than “logic configured to receive from a cable television system (CTS) a television program schedule with a plurality of scheduled television programs, the plurality of scheduled television programs including at least one currently scheduled television program, said currently scheduled television program being ***scheduled for broadcast to a plurality of users at a predetermined current time***, and at least one scheduled future television program, ***said scheduled future television program being otherwise available only via a scheduled broadcast to a plurality of users at a predetermined later time***... logic configured to provide said user with an interactive program guide (IPG) configured to display the television program schedule, said IPG being further configured to ***provide a user option to highlight a scheduled television program in the program schedule***... [and] logic configured to provide, ***in response to a user highlighting said scheduled future television program***, said user ***with said scheduled future television program at a user-defined time***” as recited in claim 36. For at least this reason, claim 36 is allowable over the cited art.

Additionally, neither *TheStranger* nor *Imajima* disclose all of the elements of claim 36. More specifically, *TheStranger* merely discloses *The Truman Show* next to the date of February 11. *TheStranger* not only fails to disclose anything related to “logic configured to provide said user with an interactive program guide (IPG) configured to display the television program schedule, said IPG being further configured to ***provide a user option to highlight a scheduled television program in the program schedule***,” but *TheStranger* fails to disclose whether *The Truman Show* has aired the previous February 11, whether the author of *TheStranger* desires to view *The Truman Show* at this time, or anything related to claim 36. For at least this reason, *TheStranger* fails to overcome the deficiencies of *Ellis*.

Further, *Imajima* appears to disclose, at most, “an NVOD... [and] an FVOD” (column 1, line 30). Applicants respectfully submit that this does not overcome the deficiencies of *Ellis*, *LaJoie*, and *TheStranger*. For at least the reason that the references independently and in combination fail to disclose all of the claimed elements, claim 36 is allowable over the cited art.

**D. Claims 3 – 4, 7 – 8, 10 – 12, 18, 20 – 21, 25, 28 – 29, and 35 are Allowable Over *Ellis* in view of *LaJoie*, *TheStranger*, and *Imajima***

The Office Action indicates that claims 3 – 4, 7 – 8, 10 – 12, 18, 20 – 21, 25, 28 – 29, and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima*. Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie*, *TheStranger*, and *Imajima* fails to disclose, teach, or suggest all of the elements of claims 3 – 4, 7 – 8, 10 – 12, 18, 20 – 21, 25, 28 – 29, and 35. More specifically, dependent claims 3 – 4, 7 – 8, 10 – 12, and 18 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Dependent claims 20 – 21, 25, 28 – 29, and 35 are believed to be allowable for at least the reason that they depend from allowable independent claim 36. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**E.      Claims 2 and 22 are Allowable Over *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Kostreski***

The Office Action indicates that claims 2 and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima* and in further view of U.S. Patent Number 5,534,912 (“*Kostreski*”). Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Kostreski* fails to disclose, teach, or suggest all of the elements of claims 2 and 22. More specifically, dependent claim 2 is believed to be allowable for at least the reason that this claim depends from allowable independent claim 1. Dependent claim 22 is believed to be allowable for at least the reason that this claim depends from allowable independent claim 36. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**F.      Claims 5 – 6 and 23 – 24 are Allowable Over *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Matthews***

The Office Action indicates that claims 5 – 6 and 23 – 24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima* and in further view of U.S. Patent Number 5,815,145 (“*Matthews*”). Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Matthews* fails to disclose, teach, or suggest all of the elements of claims 5 – 6 and 23 – 24. More specifically, dependent claims 5 and 6 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Dependent claims 23 and 24 are believed to be allowable for at least the reason that they depend from allowable independent claim 36. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**G. Claims 9, 15 – 17, 27, and 32 – 34 are Allowable Over *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Girard***

The Office Action indicates that claims 9, 15 – 17, 27, and 32 – 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima* and in further view of U.S. Patent Number 5,751,282 (“*Girard*”). Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Girard* fails to disclose, teach, or suggest all of the elements of 9, 15 – 17, 27, and 32 – 34. More specifically, dependent claims 9 and 15 – 17 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Dependent claims 27 and 32 – 34 are believed to be allowable for at least the reason that they depend from allowable independent claim 36. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**H. Claims 13 – 14 and 30 – 31 are Allowable Over *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Gordon***

The Office Action indicates that claims 13 – 14 and 30 – 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis* in view of *LaJoie* and *Imajima* and in further view of U.S. Patent Number 5,682,597 (“*Gordon*”). Applicants respectfully traverse this rejection for at least the reason that *Ellis* in view of *LaJoie* and *Imajima* and in further view of *Gordon* fails to disclose, teach, or suggest all of the elements of 13 – 14 and 30 – 31. More specifically, dependent claims 13 – 14 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Dependent claims 30 – 31 are believed to be allowable for at least the reason that they depend from allowable independent

claim 36. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

## **II. Allegedly Inherent and Allegedly Well Known Subject Matter**

### **A. The Subject Matter of Claims 1, 19, and 36 is Not Well Known**

In rejecting claims 1, 19, and 36, the Office Action states “it is well known in this art for newly released programs to be available on VOD, pay-per-view or any other similar system before they are available on non-pay television” (OA page 3, line 7). Applicants respectfully traverse the alleged finding of well known subject matter and submit that the subject matter noted above should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions, as required. Additionally, Applicants submit that merely providing a reference (or a couple of references) that allegedly discloses the subject matter in question does not rise to an evidentiary level of being well known in the industry. Applicants submit that even if the cited references disclose the subject matter in question (a point that the Applicants are not conceding), presence of that subject matter in a reference does not raise the level of commonality of that subject matter to something of unquestionable fact. For at least this specific and particular reason, Applicants submit that the subject matter in question is not well known in the art.

Applicants additionally submit that particularly in the context of the claimed combination that includes “providing a user with an interactive program guide (IPG), the IPG including a television program schedule with a plurality of scheduled programs,” the subject matter in question is too complex for a reasonably skilled person to consider it to be well known to the

point that no additional evidence is needed. For at least this additional specific and particular reason, Applicants respectfully submit that the subject matter in question is not well known in the art, respectfully traverses the cited Official Notice, and submits that claims 1, 19, and 36 are patentable in view of the cited art.

**B. The Subject Matter of Claims 1, 19, and 36 is Not Inherent**

In addition, the Office Action asserts “it is inherent that the user would not otherwise receive the program in advance of its 2001 NBC date, unless he or she requested it in advance” (OA page 3, line 20). Applicants respectfully traverse the finding of inherency. It is well established that “[t]o establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In Re Anthony J. Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2D (BNA) 1949, 1950-51 (Fed. Cir. 1999).

Applicants respectfully submit that the Office Action fails to adequately establish that the subject matter of claims 1, 19, and 36 is necessarily present. As the Office Action fails to provide any extrinsic evidence that makes clear that the missing descriptive matter is necessarily present, Applicants respectfully submit that inherency has not been established. In accordance with *In re Robertson*, Applicants traverse the inherency finding, and submit that claims 1, 19, and 36 are allowable over the cited art.

## CONCLUSION

For at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

/\_ afb /  
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